



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Molly Joseph Ward
Secretary of Natural Resources

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO WAP MHC I, LLC FOR Bexley Mobile Home Park Unpermitted Groundwater Withdrawal

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-268, between the State Water Control Board and WAP MHC I, LLC, regarding the Bexley Mobile Home Park, for the purpose of resolving certain violations of the Virginia Groundwater Management Act of 1992 (Va. Code § 62.1-254 *et seq.*) and its supporting regulations (9 VAC 25-610-10, *et seq.*).

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Act" means the Groundwater Management Act of 1992, Va. Code §§ 62.1-254, *et seq.*
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Draft permit" means a prepared document indicating the board's tentative decision relative to a permit action.
5. "Director" means the Director of the Department of Environmental Quality.

6. "Facility" means the Bexley Mobile Home Park, a mobile home community consisting of ninety-five connections, located at 7413 Allstate Drive, Petersburg, Virginia 23805.
7. "Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of the Commonwealth of Virginia, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs.
8. "Groundwater Management Area" means a geographically defined groundwater area in which the board has deemed the levels, supply or quality of groundwater to be adverse to public welfare, health and safety.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or an "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" means a groundwater withdrawal permit issued under the Ground Water Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.
12. "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of the Commonwealth or any other state or country. 9 VAC 25-610-10.
13. "Regulations" means the Ground Water Withdrawal Regulations, 9 VAC 25-610-10 *et seq.*
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "Well" means any artificial opening or artificially altered natural opening, however made, by which groundwater is sought or through which groundwater flows under natural pressure or is intended to be withdrawn.
17. "Withdrawal system" means (i) one or more wells or withdrawal points located on the same or contiguous properties under common ownership for which the withdrawal is applied to the same beneficial use, or (ii) two or more connected wells or withdrawal points which are under common ownership but are not necessarily located on contiguous properties.

SECTION C: Findings of Fact and Conclusions of Law

1. WAP MHC I, LLC is a limited liability company authorized to do business in Virginia. WAP MHC I, LLC is a “person” within the meaning of Va. Code § 62.1-44.3.
2. On January 12, 2015, WAP MHC I, LLC purchased the Facility from Bexley Properties, LLC. Bexley Properties, LLC failed to obtain a Permit and was operating the Facility pursuant to a Consent Special Order that was executed on March 28, 2014 that was nontransferable to WAP MHC I, LLC.
3. After purchasing the Facility, WAP MHC I, LLC continued to operate the withdrawal system prior to permit issuance.
4. On February 2, 2015, WAP MHC I, LLC submitted groundwater withdrawal reports showing that it had operated the withdrawal system, consisting of four wells, withdrawing 502,400 gallons of groundwater in January 2015.
5. Va. Code § 62.1-258 states that, “It shall be unlawful in a groundwater management area for any person to withdraw, attempt to withdraw, or allow the withdrawal of any groundwater, other than in accordance with a groundwater withdrawal permit or as provided in § 62.1-259, subsections C, D and F of § 62.1-260, and subsection C of § 62.1-261.”
6. 9 VAC 25-610-40(A) states that, “No person shall withdraw, attempt to withdraw, or allow the withdrawal of groundwater within a groundwater management area, except as authorized pursuant to a groundwater withdrawal permit, or as excluded in 9VAC25-610-50.”
7. On February 23, 2015 DEQ issued NOV No. 15-02-OWS-001 for the observation in C(4) above.
8. On February 25, 2015 WAP MHC I, LLC updated the groundwater withdrawal Permit application previously submitted by Bexley Properties, LLC.
9. On March 3, 2015 WAP MHC I, LLC discussed the observations cited in the NOV with DEQ and agreed to continue to submit groundwater withdrawal data or any other information that may be necessary to carry out the provisions of the Ground Water Management Act of 1992.
10. On March 10, 2015 WAP MHC I, LLC submitted groundwater withdrawal reports showing that it had operated the withdrawal system, withdrawing 677,127 gallons of groundwater in February 2015.

11. Based on the results of the file review, groundwater withdrawal data, and discussions with WAP MHC I, LLC, the Board concludes that WAP MHC I, LLC has violated Va. Code § 62.1-258 and 9 VAC 25-610-40(A) as described in paragraphs C(3) through C(10) above.
12. In order for WAP MHC I, LLC to return to compliance, DEQ staff and representatives of WAP MHC I, LLC have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

By virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders WAP MHC I, LLC and WAP MHC I, LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$1,400 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

WAP MHC I, LLC shall include its Federal Employer Identification Number (FEIN) (32-0452599) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department refers collection of moneys due under this Order to the Department of Law, WAP MHC I, LLC shall be liable for attorneys' fees equal to 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of WAP MHC I, LLC for good cause shown by WAP MHC I, LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and NOV# 15-02-OWS-001. This Order shall not preclude the Board or the

Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, WAP MHC I, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. WAP MHC I, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order
5. WAP MHC I, LLC declares it has received fair and due process under the Administrative Process Act and the Ground Water Management Act of 1992, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by WAP MHC I, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. WAP MHC I, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. WAP MHC I, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. WAP MHC I, LLC shall notify the Groundwater Withdrawal Program Manager verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

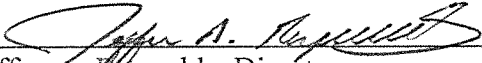
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and WAP MHC I, LLC.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after WAP MHC I, LLC has completed all of the requirements of the Order;
 - b. WAP MHC I, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to WAP MHC I, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve WAP MHC I, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by WAP MHC I, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of WAP MHC I, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind WAP MHC I, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of WAP MHC I, LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, WAP MHC I, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18th day of June, 2015



Jefferson Reynolds, Director
Division of Enforcement
Department of Environmental Quality

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WAP MHC I, LLC voluntarily agrees to the issuance of this Order.

Date: 4/23/15 By: [Signature], mgr
Stewart Garland (Title)

Commonwealth of Virginia
City/County of Richmond

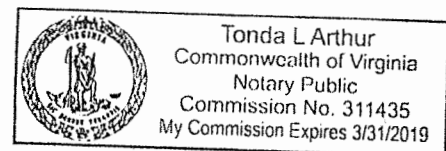
The foregoing document was signed and acknowledged before me this 23rd day of
April, 2015, by Stewart Garland who is
manager of WAP MHC I, LLC on behalf of the company.
(Title)

[Signature]
Notary Public

311435
Registration No.

My commission expires: 3/31/19

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

WAP MHC I, LLC shall, in accordance with the provisions of the State Water Control Law, the Ground Water Management Act of 1992, and the Ground Water Withdrawal Regulations, comply with the following:

- 1 Take all reasonable and practicable steps necessary to secure a Virginia Department of Health waterworks operation permit, or equivalent, in accordance with 12 VAC 5-590-10 *et seq.*
- 2 Comply with all conditions of the March 25, 2015 Draft Permit (Permit Number: GW0009200).

3 **DEQ Contact**

Unless otherwise specified in this Order, WAP MHC I, LLC shall submit all requirements of this Order to:

Department of Environmental Quality
Groundwater Permitting and Characterization Program
Attn: Groundwater Withdrawal Program Manager
PO Box 1105
Richmond VA 23218